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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,237	08/06/2001	Pierre Rondeau	P 283091 RP-00129-US2	7574

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EXAMINER

KLEBE, GERALD B

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/922,237

Applicant(s)

RONDEAU ET AL.

Examiner

Gerald B. Klebe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 3-12, 15-24, 26-36 and 39-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8, 15-20, 26-28, 34-36, 39, and 41 is/are rejected.
- 7) ☒ Claim(s) 9-12, 21-24, 29-33, 40, and 42-47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 8
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Amendment

1. The amendment filed 6/09/2003 under 37 CFR 1.111 has been entered. By the amendment, claims 3-5, 15-17, 29, and 42 are amended. Claims 3-12, 15-24, 26-36, and 39-47 are pending in the application, claims 1-2, 13-14, 25, and 37-38 previously being cancelled.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 3-5, 8, 15-17, 20, 39, 41, and 46-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Gagnon et al. (US 6523634 B1).

The applied reference has a common Assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

4. Gagnon et al. discloses (re: **claims 3, 4, 15, 16, and 39**), a fender structure for a vehicle with a plurality of wheels and an all terrain vehicle with a plurality of wheels comprising (refer Figures 2, 6-8, and 11-13): a right fender portion positionable over a right wheel; a left fender portion associated with the right fender portion and positionable over a left wheel (104 and refer col 7, lines 29-30), wherein at least one of the right fender and the left fender portion includes a

support portion designed as a load-bearing surface defined in part by a top surface of at least one of the left and right fender portions (Figs 2 and 6, taken as the tops of the fenders, as shown); a storage compartment (Fig 13, where the compartment is shown with its covering hatch (182) in raised position, and refer col 9, lines 49-57) formed in the support portion with an opening through which items may be placed into the storage compartment; a cover (Figs 2, 6, and 13; item 182) positionable over and sized to cover the opening; and where the fender structure includes a central support surface (Fig 6, item 182) defined by the cover (182) and a lateral support surface on each side of the central support surface (ref. Figs 2 and 6); and raised support portions in at least one of a lateral, longitudinal, and diagonal direction, integrally formed in at least one to the support portion and the storage compartment (refer to the attached examiner's mark-up of Figs 2, 6, and 12, where the examiner points out and identifies longitudinally oriented raised support portions integrally formed in the top surfaces of the fenders); and wherein (**re: claim 41**) the fender structure and the built-in raised support portions are formed as a one piece unit (refer Figs 2, 6, and 12 and the examiner's mark-up of these figures, attached hereto); and comprising (**re: claims 5 and 17**) wherein the right fender, the left fender and the support portion are formed in one piece with one another as a single unit (refer Figs 6 and 12); and (**re: claims 8 and 20**) further comprising a mud guard positionable adjacent at least one of the left and right wheels; and a floor board extending away from the mud guard (Fig 7, item 120).

Examiner's Note: Regarding the recitations in claims 3, 4, 15, and 16, that the support portion is designed as a load-bearing surface, it is inherent that the top surfaces of vehicle fenders are designed as and are capable of bearing a load, as broadly disclosed and claimed (emphasis added).

5. Claims 4-5, 16-17, 26, 28, and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsutsumikoshi et al. (US 4535869).

Tsutsumikoshi et al. discloses an all terrain vehicle with a plurality of wheels, and a fender structure therefor (Fig 2, items 8 and 9), including a plurality of raised support portions (Fig 2, the raised portions of 8 and 9 that extend above the top surfaces of the fenders themselves) wherein the raised support portions and the fender structure are formed of a plastic material; having a right fender portion positionable over a right wheel; a left fender portion associated with the right fender portion and positionable over a left wheel, wherein at least one of the right fender portion and the left fender portion includes a support portion designed as a load-bearing surface that is defined at least in part by a top surface of at least one of the left and right fender portions (it is inherent that vehicle fender top surfaces are designed as and are capable of supporting loads (as broadly disclosed and claimed)); and raised support portions in at least one of a lateral, longitudinal, and diagonal direction formed in one piece with the support portion; and a main frame (2) from which the wheels (3, 4) are suspended; and a bumper (43) supported by the main frame, wherein the raised support portions are supported by the main frame and are not supported by the bumper; and wherein (**re: claims 5, 17, and 28**) the right fender portion, the left fender portion and the support portion are formed in one piece with one another as a single unit (refer col 5, lines 38-40); and wherein (**re: claim 34**) the fender structure comprises lateral portions and at least one cross-over portion extending transverse to the lateral portion, the lateral portions and the at least one cross-over portion defining a support plane (as seen in Fig 2); and wherein (**re: claim 35**) the fender structure is a rear end portion (9) of the all terrain vehicle; and wherein (**re: claim 36**) the fender structure is a front end portion (8) of the all terrain vehicle.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior

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art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6-7, 18-19, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsutsumikoshi et al. (US 4535869) in view of Tarahomi (US 6299244 B1).

a. As addressed above, Tsutsumikoshi et al. teach an all terrain vehicle including a plurality of wheels, the vehicle and fender structure comprising all of the features of claim 5 from which claims 6 and 7 depend, and of claim 17 from which claims 18 and 19 depend, and of claim 26 from which claim 27 depends.

b. Tsutsumikoshi et al. is silent **regarding the limitations of claims 6 and 17**, wherein the single unit comprising the right and left fender portions and the support portion is formed by one of blow-molding and injection molding.

c. However, Tarahomi teaches the use of blow-molding or injection molding of complex body panels of vehicles.

d. Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the disclosure of Tsutsumikoshi et al. in accordance with the teachings of Tarahomi to disclose that the single unit comprising the fenders and support portions were formable by one of blow-molding and injection molding depending upon the need for economy of construction versus the requirement to hold the finished part to tight tolerances, respectively, as suggested by the reference at column 1, lines 41-60.

e. **Regarding the feature of claims 7, 19 and 27**, wherein the plastic material of the structure is one of polyethylene, polypropylene, and fiberglass-charged polyethylene, Tsutsumikoshi et al. is silent regarding the materials used. However, Tahahomi teaches the use of polyethylene and other polyester plastics in the formation of vehicle body panels (refer col 3, lines 54-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have formed the fender and support structure of a material

selected from one of polyethylene, polypropylene, and fiberglass-charged polyethylene as a low-cost, strong material as suggested by the reference.

Allowable Subject Matter

8. Claims 9-12, 21-24, 29-33, 40, and 42-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Argument

9. Applicant's arguments with respect to the claims have been considered but are not persuasive in all respects. Added explanation of the rejections has been provided above. Examiner's response in areas of disagreement with the Applicant's arguments relative to the rejections based in the prior art of Gagnon (US 6523634 B1) follows.

Applicant alleges that Gagnon (-634) does not disclose that at least one of the fender portions includes a support portion designed as a load bearing surface, citing in support of this allegation, that the top surface of the fenders of Gagnon (-634) are covered by a rack and therefore not accessible to act as a load bearing surface. The examiner disagrees: here, the Applicant relies on limitations not claimed, and moreover, it is noted that the rack referred to is an open frame structure through which, clearly, load could be placed upon and supported by the fenders' top surface(s). Secondly, Applicant alleges that the fenders of Gagnon are formed of a flexible plastic that would easily buckle under an applied load. The examiner notes that Applicant is relying on information not found in the reference (Gagnon is silent regarding the material of which the fender(s) are made); regardless, since neither the Applicant's disclosure nor claims identify the amount of load the fender is presumed designed to support, the examiner's position is that vehicle fenders, inherently, are designed and capable of supporting a load, as broadly disclosed and claimed.


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Applicant's further allegation that Gagnon does not disclose the fender structure (of claim 4) or the vehicle (of claims 15 and 16) is not persuasive, relying as it does on some undisclosed and undefined amount of applied load that the fenders cannot support.

Regarding Applicant's arguments that the reference to Gagnon does not disclose a fender structure having a plurality of built-in raised support portions, the examiner disagrees and these have been addressed above in detail in each rejection where appropriate, including the attached examiner's mark-ups of selected figures from the reference particularly pointing out the raised support portions relied upon in the rejections of the instant Office action.

Conclusion

10. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe at 703-305-0578, facsimile 703-308-2571, Mon - Fri, 8:00 AM - 4:30 PM ET, or to Supervisory Patent Examiner Brian L. Johnson, Art Unit 3618, at 703-308-0885.


gbklebe / Art Unit 3618 / 25 August 2003


BRIAN L. JOHNSON 8/25/03
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